

108TH CONGRESS  
1ST SESSION

# H. R. 3355

To amend titles XVIII and XIX of the Social Security Act to establish minimum requirements for nurse staffing in nursing facilities receiving payments under the Medicare or Medicaid Program.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2003

Mr. WAXMAN (for himself, Mr. DINGELL, Mr. STARK, Mr. BROWN of Ohio, Mr. FROST, Mr. GEORGE MILLER of California, Ms. SCHAKOWSKY, Mr. CARSON of Oklahoma, Mr. RODRIGUEZ, Mr. MARKEY, Ms. NORTON, Ms. KAPTUR, Mr. SANDERS, Mr. HOFFMAN, Mrs. MALONEY, Mr. GRIJALVA, Mr. HINCHY, Mr. UDALL of New Mexico, Mr. ACEVEDO-VILÁ, Mr. KUCINICH, Mr. MOORE, Mr. LANTOS, Ms. CORRINE BROWN of Florida, Mr. THOMPSON of Mississippi, Mr. BERMAN, Mr. WEXLER, Mr. EVANS, Ms. ROYBAL-ALLARD, Mr. KILDEE, Ms. BALDWIN, Mrs. CAPPS, Ms. SOLIS, Mr. STUPAK, Mr. KLECZKA, Mr. BACA, Mr. MCGOVERN, Mr. HOLT, Mr. PALLONE, Ms. ESHOO, Mr. BRADY of Pennsylvania, Mr. CLAY, and Mr. McDERMOTT) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to establish minimum requirements for nurse staffing in nursing facilities receiving payments under the Medicare or Medicaid Program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; PURPOSE.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Nursing Home Staffing Act of 2003”.

4 (b) PURPOSE.—The purpose of this Act is to improve  
5 the quality of care received by residents of nursing facili-  
6 ties through the implementation of the minimum nurse  
7 staffing levels identified by the Secretary of Health and  
8 Human Services in a report to Congress submitted on  
9 March 21, 2002.

10 **SEC. 2. IMPLEMENTATION OF NURSE STAFFING STAND-**  
11 **ARDS.**

12 (a) IN GENERAL.—Sections 1819(b)(4) and  
13 1919(b)(4) of the Social Security Act (42 U.S.C. 1395i–  
14 3(b)(4); 1396r(b)(4)) are each amended by adding at the  
15 end the following new subparagraph:

16 “(D) MINIMUM STAFFING REQUIRE-  
17 MENTS.—

18 “(i) DEADLINE FOR COMPLIANCE  
19 WITH MINIMUM STANDARDS.—With respect  
20 to facility services provided after the date  
21 that is the end of the 2-year period begin-  
22 ning on the date of the enactment of this  
23 subparagraph, a facility shall comply with  
24 the minimum staffing levels promulgated  
25 by the Secretary under clause (ii).

26 “(ii) FINAL REGULATIONS.—

1           “(I) IN GENERAL.—Not later  
2 than 1 year after the date of the en-  
3 actment of this subparagraph, and  
4 consistent with the provisions of this  
5 clause, the Secretary shall promulgate  
6 standards for minimum staffing levels  
7 for facilities. Such standards shall  
8 provide for sufficient staffing levels  
9 during day, evening, and night shifts  
10 to ensure that residents of nursing fa-  
11 cilities receive the level of care nec-  
12 essary to meet the objectives of sub-  
13 section (b)(2), and shall provide for  
14 appropriate adjustments to account  
15 for resident case mix.

16           “(II) MINIMUM STANDARDS.—  
17 Subject to subclause (III), standards  
18 promulgated under subclause (I) shall  
19 be, at a minimum, the HHS minimum  
20 nurse staffing ratios (as defined in  
21 clause (iii)).

22           “(III) AUTHORITY TO PHASE IN  
23 FACILITY COMPLIANCE WITH STAND-  
24 ARDS.—If the Secretary determines  
25 that compliance with the HHS min-

1           imum nurse staffing ratios is not fea-  
2           sible for nursing facilities by the end  
3           of the 2-year period applicable under  
4           clause (i), the Secretary may delay the  
5           implementation of the HHS minimum  
6           nurse staffing ratios until the date  
7           that is the end of the 5-year period  
8           that begins on the date of the enact-  
9           ment of this subparagraph. If the Sec-  
10          retary delays implementation of the  
11          HHS minimum nurse staffing ratios  
12          under the previous sentence, the Sec-  
13          retary shall phase in over such 5-year  
14          period alternative minimum staffing  
15          standards that gradually increase in  
16          each of the years of the phase-in until  
17          the such standards meet the HHS  
18          minimum nurse staffing ratios.

19               “(IV)   COUNTING.—In   deter-  
20           mining compliance with the staffing  
21           levels under this subparagraph, an in-  
22           dividual may not be counted while  
23           performing services that are not direct  
24           nursing care, such as administrative  
25           services, food preparation, house-

1 keeping, laundry, maintenance serv-  
2 ices, or other activities that are not  
3 direct nursing care.

4 “(iii) HHS MINIMUM NURSE STAFF-  
5 ING RATIOS.—The term ‘HHS minimum  
6 nurse staffing ratios’ means the minimum  
7 staffing levels identified in the report to  
8 Congress entitled ‘Appropriateness of Min-  
9 imum Nurse Staffing Ratios in Nursing  
10 Homes, Report to Congress: Phase II  
11 Final’ submitted by the Secretary on  
12 March 21, 2002, which require—

13 “(I) from 2.4 to 2.8 hours of  
14 care per resident per day by a cer-  
15 tified nurse aide, and

16 “(II) from 1.15 to 1.3 hours of  
17 care per resident per day by a licensed  
18 practical nurse, a licensed vocational  
19 nurse, or a registered nurse, of which  
20 from 0.55 to 0.75 hours of care per  
21 resident per day shall be provided by  
22 a registered nurse.

23 “(iv) CONSTRUCTION.—

24 “(I) NONPREEMPTION.—Nothing  
25 in this subparagraph shall be con-

1           strued as prohibiting the Secretary or  
 2           a State (in the case of title XIX) from  
 3           imposing higher minimum staffing  
 4           levels on facilities than those imposed  
 5           under this subparagraph.

6                   “(II)     MINIMUM     STANDARDS  
 7           ONLY.—Compliance with the staffing  
 8           requirements imposed under this sub-  
 9           paragraph alone shall not be con-  
 10          strued as complying with the require-  
 11          ment under paragraph (2) to provide  
 12          services to attain or maintain the  
 13          highest practicable physical, mental,  
 14          and psychosocial well-being of each  
 15          resident.

16                   “(III)    SUPPLEMENTARY    RE-  
 17          QUIREMENTS.—The staffing require-  
 18          ments of this subparagraph are in ad-  
 19          dition to the requirements of subpara-  
 20          graph (C).”.

21       (b) POSTING OF STAFFING INFORMATION.—

22           (1) IN GENERAL.—The first sentence of sub-  
 23          paragraph (A) of sections 1819(b)(8) and  
 24          1919(b)(8) of the Social Security Act (42 U.S.C.  
 25          1395i–3(b)(8); 1396r(b)(8)) are each amended by

1 inserting before the period the following: “, a de-  
 2 scription of the minimum staffing requirements  
 3 under paragraph (4)(D), and the average number of  
 4 hours of nursing care that residents of the facility  
 5 have received for each of the four previous calendar  
 6 quarters”.

7 (2) REPORTS.—Such sections are each amended  
 8 by adding at the end the following new subpara-  
 9 graph:

10 “(C) REPORTS OF STAFFING DATA.—A fa-  
 11 cility shall maintain records on nurse staffing,  
 12 and shall submit such reports of such records  
 13 to the Secretary as the Secretary may require  
 14 for the administration and enforcement of this  
 15 section. Such records shall be reviewed for accu-  
 16 racy as part of a standard survey required  
 17 under subsection (g)(2)(A).”.

18 **SEC. 3. INCREASED RESOURCES.**

19 (a) REINSTITUTION OF BOREN AMENDMENT PAY-  
 20 MENT METHODOLOGY.—

21 (1) IN GENERAL.—Section 1902(a)(13) of the  
 22 Social Security Act (42 U.S.C. 1396a(a)(13)) is  
 23 amended to read as follows:

24 “(13) provide for payment of services through  
 25 the use of rates determined pursuant to the criteria

1 under this paragraph as in effect on August 1,  
2 1997;”.

3 (2) ESTABLISHMENT OF SAFE HARBOR  
4 RATES.—Section 1902 of such Act (42 U.S.C.  
5 1396a) is amended by adding at the end the fol-  
6 lowing: “The Secretary may, by regulation, promul-  
7 gate standards or methodologies for determining  
8 rates that comply with paragraph (13), and a State  
9 that pays rates that meet such standards or meth-  
10 odologies is deemed to be in compliance with para-  
11 graph (13).”.

12 (3) EFFECTIVE DATE.—The amendment made  
13 by this subsection shall apply to services furnished  
14 on or after the date that is one year after the date  
15 of the enactment of this Act.

16 (b) PERMANENT 1.5 PERCENT INCREASE OF MED-  
17 ICAID FMAP BEGINNING WITH FISCAL YEAR 2004.—  
18 Section 1905(b) of the Social Security Act (42 U.S.C.  
19 1396d(b)) is amended by adding at the end the following:  
20 “With respect to calendar quarters beginning after Octo-  
21 ber 1, 2003, the Federal medical assistance percentage for  
22 a State determined under the first sentence shall be in-  
23 creased by 1.50 percentage points.”.

24 (c) FINANCIAL ACCOUNTABILITY.—

1           (1) IN GENERAL.—Sections 1819(g)(2) and  
 2           1919(g)(2) of the Social Security Act (42 U.S.C.  
 3           1395i–3(g)(2); 1396r(g)(2)) are each amended—

4                   (A) by redesignating subparagraphs (C),  
 5                   (D), and (E) as subparagraphs (D), (E), and  
 6                   (F); and

7                   (B) by inserting after subparagraph (B)  
 8           the following new subparagraph:

9                   “(C) FINANCIAL ACCOUNTABILITY.—A  
 10           standard or an extended survey may include an  
 11           examination of the financial records of a facility  
 12           to determine whether payments made to the fa-  
 13           cility under this section for services furnished to  
 14           residents are being used in a manner consistent  
 15           with this section.”.

16           (2) COMPOSITION OF MULTIDISCIPLINARY  
 17           TEAM.—Sections 1819(g)(2)(E)(i) and  
 18           1919(g)(2)(E)(i) of the Social Security Act (42  
 19           U.S.C. 1395i–3(g)(2)(E)(i); 1396r(g)(2)(E)(i)) are  
 20           each amended by inserting after the period the fol-  
 21           lowing: “This multidisciplinary team may include  
 22           professionals trained in financial accounting and au-  
 23           diting.”

1           (3) EFFECTIVE DATE.—The amendments made  
2       by paragraph (1) shall apply to surveys conducted  
3       on or after the date of the enactment of this Act.

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